

EXHIBIT H

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MIGUEL ORTEGA, BENJAMIN ORTEGA
A MINOR, BY AND THROUGH HIS GUARDIAN
AD LITEM, ANA ROSA ORTEGA,

Plaintiffs,

vs.

NO. C-07-02659 JCS

CITY OF OAKLAND, OAKLAND POLICE
DEPARTMENT, WAYNE TUCKER, IN HIS
CAPACITY AS THE POLICE CHIEF OF
THE CITY OF OAKLAND,

A rectangular stamp with the word "COPY" in a stylized, outlined font.

Defendants.

DEPOSITION OF BENJAMIN ORTEGA

JANUARY 17, 2008

TAKEN BEFORE BARBARA JARNAGIN
CERTIFIED SHORTHAND REPORTER
FOR THE STATE OF CALIFORNIA
C.S.R. LICENSE NO. 2816



Pizzotti & Jarnagin

Certified Shorthand Reporters
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(925) 416-1800 ♦ FAX (925) 416-0971

ORTEGA BENJAMIN  January 17, 2008

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DEPOSITION OF BENJAMIN ORTEGA

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Pursuant to Notice of Taking Deposition and on
Thursday, January 17, 2008, commencing at the hour of
10:00 o'clock a.m., at the Oakland City Attorney, One
Frank Ogawa Plaza, 6th Floor, Oakland, California 94612,
before Barbara Jarnagin, a duly qualified certified
shorthand reporter of the State of California,
personally appeared BENJAMIN ORTEGA, produced as a
witness in the above-entitled action, who, being first
duly sworn, was thereupon examined as a witness in said
action.

MR. STEVEN R. JACOBSEN, Attorney at Law, 9901
Clay Street, Oakland, California 94607, was present on
behalf of the Plaintiffs.

CHARLES VOSE, Deputy City Attorney, Oakland
City Attorney, One Frank Ogawa Plaza, 6th Floor,
Oakland, California 94612 was present on behalf of the
Defendant, City of Oakland.

1 Q. Did you ever carry the flag into International
2 Boulevard?

3 A. No.

4 Q. At some point did you make contact with two
5 Oakland Police Department police officers?

6 A. Could you explain that to me?

7 Q. At some point did two Oakland Police Department
8 officers talk to you?

9 A. Yes.

10 Q. And are those the two officers that have been
11 named in this lawsuit; Officer Ortiz and Officer
12 Alcantar?

13 A. Yes.

14 Q. And where were you when you first -- when they
15 first contacted you?

16 A. When I was crossing 14th, I'm coming from
17 McDonald's.

18 Q. So you first made contact with them when you
19 were coming back from McDonald's?

20 A. Yes.

21 Q. And where were you when you made -- when they
22 made contact with you? When I say "where were you,"
23 were you walking on the sidewalk or were you in the
24 street?

25 A. I was crossing International.

1 Q. Okay. And at that time were you holding a
2 flag?

3 A. Yes.

4 Q. So when you went to McDonald's, you had the
5 flag with you?

6 A. Yes.

7 Q. What did the officers say to you; if you
8 remember?

9 A. Officer Alcantar said to me, "Throw that flag
10 before I shove it up your ass," yes.

11 Q. And was Officer Alcantar inside or outside of
12 his vehicle when he said that to you?

13 A. Inside the car.

14 Q. Was that car moving at the time he said that to
15 you?

16 A. Yes.

17 Q. How far away from the car were you when Officer
18 Alcantar said that to you?

19 A. I don't remember.

20 Q. Were you on the same side of the car as Officer
21 Alcantar was when he said that to you?

22 THE INTERPRETER: Madam Court Reporter, would
23 you kindly repeat that for the interpreter, please?

24 (RECORD READ BACK BY THE REPORTER.)

25 THE WITNESS: I don't remember.

1 BY MR. VOSE:

2 Q. I will rephrase the question.

3 You were crossing International at 62nd Avenue?

4 A. Yes.

5 Q. What color was the light for the traffic on
6 62nd Avenue?

7 A. It was red.

8 Q. So the traffic light was red for cars coming on
9 62nd Avenue entering onto International?

10 A. Oh, no. That was green.

11 Q. So then the cars -- so the cars coming on 62nd
12 Avenue had the right to cross International?

13 A. Yes.

14 MR. JACOBSEN: Maybe the clearest thing would
15 be to ask him what was the color of the light for him.

16 BY MR. VOSE:

17 Q. Were the cars on International stopped?

18 A. Yes.

19 Q. How far across International Boulevard were you
20 when Officer Alcantar said this to you?

21 A. I was -- I had already reached the sidewalk by
22 then.

23 Q. So you were on the sidewalk when Officer
24 Alcantar said this to you?

25 A. I was just barely reaching it.

1 Q. How many other police officers were there?

2 A. I don't remember.

3 Q. Was -- did those officers arrive after Officer
4 Ortiz and Officer Alcantar?

5 A. Could you explain it to me well?

6 Q. Did these officers arrive after Officer Ortiz
7 and Officer Alcantar came to the front of the house?

8 A. Yes.

9 Q. How long after Officer Alcantar and Officer
10 Ortiz arrived did these other officers arrive?

11 A. I don't remember.

12 Q. At some point did Officer Alcantar come into
13 the front yard of the house where you were?

14 A. Yes.

15 Q. And what did he do when he came into the front
16 yard?

17 A. He grabbed my neck and then he punched me; he
18 choked me.

19 Q. Did he come -- did he do that while he was
20 standing in front of you?

21 A. Could you explain that?

22 Q. Did Officer -- Officer Alcantar came into the
23 front yard, did he say anything to you?

24 A. No. He just got there. He choked me and he
25 hit me.

1 Q. Was he in front of you when he choked you?

2 A. Yes.

3 Q. Which did he use; one or two hands to choke
4 you?

5 A. One.

6 Q. Do you remember which hand he used?

7 A. His left one and then he hit me with the right
8 elbow on my neck.

9 Q. So he -- he came up to you in front of you and
10 he grabbed your neck with his right hand?

11 A. With his left hand.

12 Q. Left hand. And did he -- how did he choke you
13 with his left hand?

14 A. Well, he grabbed me in the front part like
15 this, squeezing it hard. And then he hit me with his
16 elbow.

17 Q. So when he grabbed you with his left hand, he
18 used -- he used his thumb and his -- I don't know which
19 finger this is, the finger next to his thumb separated
20 and he put them against your neck?

21 A. Yes. He used his hand like this, (indicating)
22 yes.

23 Q. And when he did that, did he squeeze your neck?

24 A. Yes.

25 Q. How long did he choke you for?

1 A. He just grabbed me, he hit me with my (sic)
2 elbow and I fell down. And then I hit my lips, I hit my
3 face when I fell to the ground. And then he arrested me
4 then.

5 Q. So he hit you just one time with his elbow?

6 A. Yes.

7 Q. How did you fall on the ground?

8 A. Well, when I fell down, I turned and then I
9 fell face down; face down.

10 Q. Did you fall from him hitting you?

11 A. Yes.

12 Q. So he hit you on your left side of your neck,
13 so you turned towards the right?

14 A. No. When he hit me on this side, I turned to
15 this side from where he hit me from.

16 Q. You fell towards your left side?

17 A. Yes. I went this way, turned this way, and I
18 fell.

19 Q. Did Officer Alcantar fall?

20 A. No.

21 Q. Did Officer -- you said you fell to the ground
22 and hit your lip?

23 A. Yes. With the ground.

24 Q. Did you cut your lip?

25 A. Yes. I was bleeding a lot.

1 Q. So you fell to the ground, and you said Officer
2 Alcantar then arrested you?

3 A. Yes.

4 Q. Did officer -- how did Officer Alcantar arrest
5 you?

6 A. Could you explain that to me?

7 Q. When you fell to the ground, was Officer
8 Alcantar holding onto any part of you?

9 A. Yes. His knee was on my back.

10 Q. So after you fell, he put his knee on your
11 back?

12 A. Yes.

13 Q. And while you were -- so while you were on the
14 ground, he put his knee on your back and what did he do?

15 THE INTERPRETER: The interpreter -- his knee
16 was on my back.

17 BY MR. VOSE:

18 Q. What did he do then?

19 A. He arrested me.

20 Q. When he arrested you, what did he do? Did he
21 put you in handcuffs?

22 A. Yes. He handcuffed me.

23 Q. Did he handcuff you while you were on the
24 ground?

25 A. Yes.

1 **A. Yes.**

2 Q. And Miguel, once you were on the ground, Miguel
3 started running towards you?

4 **A. No. It was when Alcantar was choking me and**
5 **then he hit me.**

6 Q. That's when Miguel started running towards you?

7 **A. Yes. And then when he handcuffed me, he bent**
8 **my wrist and he said to me that he was going to break**
9 **it.**

10 Q. Now, you said when officer -- excuse me, when
11 Miguel was coming towards you, that Officer Ortiz
12 grabbed him and knocked him to the ground?

13 **A. Yes.**

14 Q. And could you see -- did you see that happen?

15 **A. When I was on the ground, I looked toward**
16 **Miguel. And the officer grabbed him and knocked him**
17 **down, with other police officers.**

18 Q. How many other police officers besides Officer
19 Ortiz knocked Miguel to the ground?

20 **A. I don't remember.**

21 Q. How far away from you was Miguel when he was
22 knocked to the ground?

23 **A. I don't remember.**

24 Q. Was Miguel on the porch or was he in the yard
25 when he was knocked to the ground?

1 **A. On the porch.**

2 Q. So did Miguel ever come off of the porch before
3 he was knocked to the ground?

4 **A. He knocked him down from the porch, like**
5 **about he fell all the way down to the yard.**

6 Q. So when he was knocked down by Officer Ortiz,
7 he fell to the ground in the yard?

8 **A. Yes.**

9 MR. JACOBSEN: Can we go off the record for a
10 moment? Off the record for a moment.

11 (MIGUEL ORTEGA JOINED THE DEPOSITION PROCEEDINGS.)

12 BY MR. VOSE:

13 Q. Back on the record.

14 After you were on the ground, how long were you
15 on the ground?

16 **A. I don't know.**

17 Q. Was it more than a minute?

18 **A. I don't remember.**

19 Q. How did you get up off of the ground?

20 **A. Alcantar was grabbing me from my wrist,**
21 **squeezing it, and he pulled me up like that**
22 **(indicating).**

23 Q. So while you were handcuffed he was squeezing
24 your wrist?

25 **A. Yes.**

1 Q. And did they say anything to you?

2 A. They had asked me if I had a green card, and
3 that he was going to take me to jail. And then after
4 that they were going to call immigration on me because
5 it was our fault.

6 Q. Did the same officer say all of these to you?

7 A. Officer Alcantar.

8 Q. Did either Officer Alcantar or Officer Ortiz
9 ask you for any identification?

10 A. No. He just asked me what my name was and how
11 old I was.

12 Q. Did you tell him?

13 A. Yes.

14 Q. Did the officers say anything to Miguel?

15 A. Yes. The same thing that they said to me.

16 Q. Was that also Officer Alcantar or was that
17 Officer Ortiz that said it -- that talked to Miguel?

18 A. It was both of them. They were both speaking
19 with us both.

20 Q. Did Miguel say anything to him?

21 A. Miguel said to let me go and that he would
22 rather have them take Miguel to the jail.

23 Q. Did the officers tell you that you were under
24 arrest?

25 A. Could you explain that to me?

1 bills, that we have and everything that's pertinent.

2 MR. VOSE: I'm going to not conclude the
3 deposition today. I will recess it with the -- leave
4 the option open to bring Benjamin back after I review
5 these documents. I don't know that I will want to
6 question him, quite frankly, but I want to reserve that
7 right because I think I should have had them by now.

8 I'm not suggesting to delay this mediation.
9 Jim might have a different feeling about it. But
10 because they are pertinent, I believe I have asked for
11 them on behalf of the city, and I think he would have
12 the right to object to that as well.

13 But I will leave -- the right to recall your
14 client to questions about those matters if I decide or
15 Jim decides if he wants to do that, as well. I want to
16 put that on the record.

17 MR. JACOBSEN: Let's go off the record and I
18 will make a phone call.

19 MR. VOSE: Sure.

20 (7-MINUTE RECESS TAKEN.)

21 MR. VOSE: Let's go back on the record.

22 Q. Did Officer Alcantar at any time make any
23 comment about your race?

24 A. He just simply asked me if I had my green card.
25 If all of us, if my cousins and I, if we had our green

1 card. Because, otherwise, he was going to call
2 Immigration on us because it was our fault.

3 Q. Did Officer Ortiz make any comment about your
4 race?

5 A. I don't remember.

6 Q. Did any other police officer, did you hear any
7 other police officer make any comment about your race?

8 A. I don't -- well, I don't remember that, either.

9 Q. Did you hear them make a comment -- any officer
10 make a comment about the race of anybody else that was
11 at your cousins' house?

12 A. I don't remember.

13 Q. I was given a list of names by your attorney a
14 few months ago of people who might be witnesses in this
15 case, and I want to ask you who they are.

16 No. I'm not asking who they are. I have a
17 list. It's not really a question.

18 A. Okay.

19 Q. I apologize if I mispronounce any of these
20 names -- who is Luis Negrete?

21 A. He's a friend.

22 Q. And he lives at 1387 62nd Avenue?

23 A. Not anymore. Not anymore.

24 He's in Mexico right now.

25 Q. He's a friend?

1 were you approaching 62nd or had you already started
2 going across International?

3 **A. I had begun to cross International.**

4 Q. And where did -- how close were you to Officer
5 Alcantara when you first noticed him?

6 **A. I don't remember.**

7 Q. When you were walking across International, you
8 were in the crosswalk between the two lines?

9 **A. Yes.**

10 Q. And when you first walked across, you know,
11 when you first started walking across International,
12 cars are not stopping on your right-hand side?

13 **A. Could you explain that to me?**

14 Q. Okay. I'm trying to find the words to describe
15 it.

16 **A. That's fine.**

17 Q. Strike whatever it is I just had hanging out
18 there, and I will ask it in a different way; okay?

19 **A. Okay.**

20 Q. As you are walking across International, that's
21 when you first noticed Officer Alcantar?

22 **A. Yes.**

23 Q. Where is he when you first notice him?

24 **A. He was inside the car.**

25 Q. I think you said earlier he was in the

PIZZOTTI & JARNAGIN (925) 416-1800

REPORTER CERTIFICATE

I, Barbara Jarnagin, hereby certify that the witness in the foregoing deposition was by me placed under oath to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein named; that the testimony of said witness was reported by me, a certified shorthand reporter and a disinterested person, and thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

In witness whereof, I
have hereunto set my hand
this 24th day of January
2008.

Certified Shorthand Reporter
State of California
License No. 2816

ORTEGA BENJAMIN January 17, 2008

PIZZOTTI & JARNAGIN, CERTIFIED SHORTHAND REPORTERS
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To: BENJAMIN ORTEGA
c/o STEVEN R. JACOBSEN
9901 CLAY STREET
OAKLAND, CALIFORNIA 94607

JAN 24 2006

RE: ORTEGA VS CITY OF OAKLAND

Dear BENJAMIN ORTEGA:

This is to inform you that your deposition conducted on January 17, 2006, has been transcribed into booklet form. You have the right to review and sign the transcript of your testimony to insure that it is true and correct. If you wish to avail yourself of this opportunity, it is necessary that you follow the instructions below. If you do not sign your deposition or forward a letter of corrections and/or changes to our offices within the time period prescribed below, please be advised that it may be used at the time of trial with the same force and effect as though it had been signed and deemed accurate.

The original transcript of your deposition shall be held in our offices for your review for not more than 30 days. It would be best to call our office before your arrival so that the transcript can be readily available.

If it is more convenient, please contact MR. Steven R. Jacobsen, Attorney at Law, at 510-465-1500 to make arrangements for reading his copy of your testimony.

If you should have any questions regarding this information, please do telephone our staff to assist you.

Very truly yours,

Barbara Jarnagin
Certified Shorthand Reporter

cc: All Counsel

ORTEGA BENJAMIN January 17, 2008